

MILWAUKEE PUBLIC SCHOOLS

Department of Technology
Central Services
5225 West Vliet Street
Milwaukee WI 53201-2181
414-475-8315

January 29, 2004

VIA United States Postal Service overnight

Letter of Appeal
Schools and Libraries Division
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

**RE: CC Docket No. 02-6
Request for Review**

SLD Action Being Appealed:
Applicant Name:
Entity Number:
Form 471 Application Number:
Funding Request Number:
Funding Year:

Service Provider Name:
Pre-Discount Amount:
Contact for this Appeal:

FCDL denial dated December 2, 2003
Milwaukee Public Schools
132882
380783
1047686
FY 2003 (July 1, 2003—
June 30, 2004)
SBC Wisconsin
\$ 3,750,946.00
James E. Davis
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To Whom It May Concern:

In a funding commitment decision letter issued by the SLD on December 2, 2003, the Milwaukee Public Schools (MPS) was denied funding for Application Number 380783 because the SLD claimed that "[N]o contract or legally binding agreement was in place when the Form 471 was filed." The Milwaukee Public Schools is hereby appealing that decision. A multi-year contract was in place at the time of the Form 471 filing and, in fact, has been in place since the contract was executed on April 10, 1998 as a result of a Form 470 posting in that same funding year.

EXHIBIT

B-4

Background:

- On February 21, 1998, a Form 470 filed by the Milwaukee Public Schools was posted on the SLD's web site requesting SONET and DS-3 data services. The Form 470 Application Number is 395290000038515.
- The Allowable Contract Date for this Form 470 was: March 21, 1998.
- On April 10, 1998, the Milwaukee Public Schools executed a five-year contract with the option of five, one-year extensions for these services. The chosen vendor was Ameritech (now SBC Wisconsin).
- On April 14, 1998, the Milwaukee Public Schools submitted Form 471 for the first year of these contract services and correctly indicated a contract expiration date of May 30, 2003—the end of the initial five year contract period.
- On February 6, 2003, Milwaukee Public Schools again submitted a Form 471—application number 1328822—for these services. In Block 5 of the application form, the applicant cited Form 470 application number 395290000038515 which is the establishing Form 470 for these services and the Form 470 which led to the execution of the existing contract.
 - In the Item 21 description of services for application 132882, the applicant clearly indicated that the Milwaukee Public Schools would be “extending its existing contract with SBC/Ameritech for it[s] SONET and DS3 data service” and further explained that Milwaukee Public Schools “is opting for a 3 year extension of this service.” In other words, the Milwaukee Public Schools exercised three of the five, one-year extensions that had been negotiated as part of the contract executed on April 10, 1998.
 - The applicant completed their Form 471 showing a contract expiration date consistent with their decision to exercise the extensions allowed for under the contract.

FCC's position on Voluntary Extensions of Contracts:

On September 1, 1999, the FCC in decision DA 99-1773 issued by Lisa M. Zaina responded to a request from the Florida Department of Management Services in which they filed a Motion for Declaratory Ruling confirming that “if it signs a contract based on a request made according to the Commission's competitive bidding process – filing FCC Form 470 and waiting for four weeks after the form is posted on the schools and libraries website – and that contract contains a renewal clause, that it can renew that contract without reposting the contract.”

The FCC granted that Motion for a Declaratory Ruling and said the following in their decision:

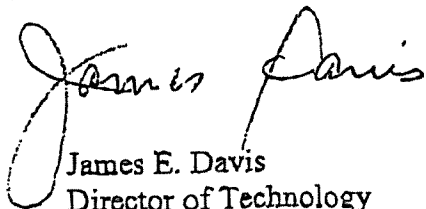
"10. We clarify, based on our review of Commission policies regarding service request postings and of our rules, that the interpretations set forth in the Florida DMS's September 8, 1998 are accurate. First, once a school or library's service request has been posted on the SLD website, the school or library may sign contracts with providers that include renewal options and the school or library subsequently may exercise those renewal options without any additional service request posting. We conclude that permitting a school or library to commit to a long-term contract after participating in the competitive bidding process does not compromise the benefits derived from competition. As long as all providers have had the opportunity to compete for the same contract, schools or libraries can enter into renewable contracts of any length or form, as permitted by state law."

"12. We, therefore, confirm that, for a contract that has been competitively bid through the FCC Form 470 application process, no reposting of the contract is necessary before a renewal option is exercised."

Summary:

The Milwaukee Public Schools executed a five-year contract with the option of five, one-year extensions. In Funding Year 2003, MPS decided to exercise three of the five one-year extensions allowed under that contract. The FCC has ruled in DA 99-1773 that schools can exercise those renewal options without any additional service request posting. Given that the contract for this service was executed on April 10, 1998, and was in place at the time the Form 471 was filed, we request that the SLD reverse their funding denial and award this funding commitment.

Sincerely,



James E. Davis
Director of Technology